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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,573	12/31/2003	Chu Chau Huang	3413-P-15111	3106

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EXAMINER

COLE, LAURA C

ART UNIT PAPER NUMBER

1744

DATE MAILED: 01/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/751,573	HUANG, CHU CHAU	
	Examiner	Art Unit	
	Laura C Cole	1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities:

On page 1 line 16 it appears that the word "paste" is a typographical error. Does the Applicant intend "plate"?

Appropriate correction is required.

Claim Objections

2. Claims 1-9 are objected to because of the following informalities:

It is unclear as to what is meant by "U-shaped" in the description of the fastening portion.

It is improper for the terms "polypropylene" and "polyvinyl chloride" to be in parentheses in Claim 2 Lines 2-3.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 and 3-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Wachtel, USPN 3,766,590.

Wachtel discloses the claimed invention including a massage structure (7) having a U-shaped fastening portion arranged circularly inwards and made integrally in one

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piece (see Figures 1 and 3, the portion labeled "7a" appears to have a "U-shape" in that two sides and a recess of the portion that engages another piece), an orientation ring engaging tightly with the massage structure (9; see Figures), a circular pad (12) including a flange disposed there around (the flange is the upper top edge portion of 12a that engages the "U-shape"; see Column 2 Lines 35-38) and an L-shaped restriction portion extending downwardly from a bottom of the circular pad (see portion that extends from "12" in Figure 1), the flange clamps in the U-shaped fastening portion of the massage structure (see Figures 1 and 3, the flange is the top surface of the upper edge portion 12a that engages the "U-shape" of "7", see Column 2 Lines 35-38), and an exterior cover (4) retained against the orientation ring and the L-shaped restriction portion (see Figure 2), whereby the orientation ring engages the massage structure, the L-shaped restriction portion, and the exterior cover simultaneously for clamping the structure (see Figure 2). The orientation ring, circular pad, and cover are made of synthetic resin (Column 1 Line 64, Column 2 Lines 4-7, 21-23). The orientation ring has a clamping portion circularly protruding from an outer circumference (10), the cover has a clamping groove (6) so that the orientation ring engages tightly with the exterior cover (see detail of Figure 3). The clamping portion shrinks from a top to bottom thereof and includes a smooth surface (see Figure 1). The orientation ring includes a restriction surface (11) formed and protruding from an inner top thereof to engage with the "U-shaped" fastening portion (see Figures 1-3). The cover further includes a step portion arranged on an inner side thereof (see Figure 2). The exterior cover includes a long handle (3) for manipulating.

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wachtel, USPN 3,766,590.

Wachtel discloses all elements above including that the orientation ring, circular pad, and exterior cover are made from a synthetic resin. However, Wachtel doesn't specify a type of synthetic resin such as polypropylene or polyvinyl chloride.

It would have been obvious for one of ordinary skill in the art at the time the invention was made to manufacture the orientation ring, circular pad, and exterior cover from polypropylene or polyvinyl chloride, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious engineering choice. In re Leshin, 125 USPQ 416.

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5. Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wachtel, USPN 3,766,590 in view of Huang, USPN 6,547,750.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). For applications filed on or after November 29, 1999, this rejection might also be overcome by showing that the subject matter of the reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. See MPEP § 706.02(I)(1) and § 706.02(I)(2).

Wachtel discloses all elements above, however doesn't disclose a cover having a pinch portion extending from a top thereof.

Huang discloses a massage device wherein there is a cover (1) having a pinch portion (12) extending from a top thereof, the pinch portion having a curve body (see

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Figure 2), and a head (13) connecting the curve body (see Figures), and a user clamps the curve body with fingers and retains the head with the back of the hand (see Figure 6; Column 2 Lines 47-53). The pinch portion is disposed on an end of the top of the exterior cover (see Figures), and the head has a retention member extending forward from an opposite end thereof (see Figures). By having a pinch portion and retention member, the massage device can be held steadily so as to prevent the device from sliding.

It would have been obvious for one of ordinary skill in the art to modify the device of Wachtel, so as to have a pinch portion, head portion, and retention member, as Huang teaches, so that the device can be held steadily without sliding.

6. Claims 1 and 3-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wachtel, USPN 3,766,590 in view of Gueret, USPN 4,249,521.

Wachtel discloses all elements above, however Wachtel may not include a massage structure having a "U-shaped" fastening portion arranged circularly inwards as "7a" may not be truly "U-shaped".

Gueret discloses a massaging brush that includes an integral massage structure (25) that has a "U-shaped" fastening portion (17) that engages a flange device (18) of a circular pad (20). This structure is used in order to better secure the elements (Column 7 Lines 7-25).

It would have been obvious for one of ordinary skill in the art to modify the "U-shaped" structure of Wachtel, to be U-shaped as Gueret teaches, so that there are

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three specific walls integrated to receive a flange structure for engaging separate pieces of a massage brush with a flange structure.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C Cole whose telephone number is (571) 272-1272. The examiner can normally be reached on Monday-Thursday, 7:30am - 5pm, alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J Warden can be reached on (571) 272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LCC
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10 January 2005


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